9-18-2012

State v. Guess Respondent's Brief Dckt. 39646

IN THE SUPREME COURT OF THE STATE OF IDAHO

STATE OF IDAHO,	)	
	)	
Plaintiff-Respondent,	)	NO. 39646
	)	
vs.	)	
	)	
CHARLES EARL GUESS,	)	
	)	
Defendant-Appellant.	)	
	)	

BRIEF OF RESPONDENT

APPEAL FROM THE DISTRICT COURT OF THE SECOND JUDICIAL DISTRICT OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF LATAH

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Nature of the Case

Charles Earl Guess appeals from the district court's orders denying his I.C. § 19-2604(1) motions for dismissal of the withheld judgment entered upon his guilty plea to aggravated assault.

Statement of Facts and Course of Proceedings

In April 2006, Guess held his wife and her divorce attorney at gunpoint, threatened to kill both of them, and twice struck his wife in the face with his hand. (R., vol. I, pp.23-26; PSI, pp.2-5, 7-9, 18-23, 27-32.) The state charged him with domestic battery and two counts of aggravated assault. (R., vol. I, pp.16-17.) Pursuant to a binding Rule 11 plea agreement, the state filed an amended information alleging one count of aggravated assault, and Guess pled guilty to that charge. (R., vol. I, pp.49-56.) As part of the Rule 11 agreement, the parties stipulated that Guess "shall receive a Withheld Judgment and shall be placed on probation to the Idaho State Department of Corrections for a period of no more than five (5) years." (R., vol. I, p.53.) The district court accepted the plea agreement and, consistent therewith, withheld judgment and placed Guess on supervised probation for a period of five years, commencing August 31, 2006. (R., vol. I, pp.103-11.) Guess performed well on probation and was transferred to unsupervised status on January 27, 2011. (R., vol. II, pp.171-73.)

On September 7, 2011, Guess filed a "Motion To Dismiss Withheld Judgment," requesting pursuant to I.C. § 19-2604(1) that the district court enter an order "terminating the sentence and setting aside the guilty plea of the

Defendant, and finally dismissing the case and discharging the Defendant." (R., vol. II, pp.174-75.) In support of his motion, Guess submitted his own affidavit and 14 letters of support. (R., vol. II, pp.176-209.) At the hearing on the motion, Guess' ex-wife, Michele, indicated that she was still fearful of Guess and, "as a victim, will always be in fear of Mr. Guess." (Tr., p.55, Ls.11-24.) The state indicated it was "not aware of any legal basis as far as a probation violation or any noncompliance with probation on the part of Dr. Guess that would forbid him seeking this relief" and left the decision to the court's discretion. (Tr., p.56, Ls.2-15.) After considering all of the information before it, the district court denied the motion without prejudice, reasoning:

> Well, I would say that this is a hard case. On one side, I have a defendant who has performed as well as any defendant I can remember while on probation. I have thoughtful and numerous letters from people who apparently know the defendant and can vouch for him and his performance while on probation.
>
> On the other side of the scale, I have what is abominable behavior which resulted in a plea of guilty being tendered by the defendant and a victim who is the mother of the defendant's son, and who apparently still is in fear of the defendant. ...
>
> ...
>
> I think [the prosecutor] is correct that in virtually all of these cases in the past where I've been shown what I have been shown in this case, I have granted the motion. I don't remember a case in the past in which a victim testified against the motion, frankly. So, the motion is denied without prejudice.

(Tr., p.56, L.19 – p.57, L.15.) The court's ruling was memorialized in a written order entered on December 23, 2011. (R., vol. II, pp.212-14.) In that order, the court also purported to formally discharge Guess from probation. (R., vol. II, p.213.)

On January 19, 2012, Guess filed a "Motion: (1) To Enforce Rule 11 Plea Agreement And Order Withholding Judgment, And To Set Aside Guilty Plea, Terminate Probation, Dismiss Action And Restore Civil Rights; Or, In The Alternative, (2) To Clarify Order Denying Defendant's Motion To Dismiss Withheld Judgment" (hereinafter "Motion To Enforce Rule 11 Plea Agreement") and affidavits in support thereof. (R., pp.218-59.) Guess argued both in his motion and at the hearing thereon that the court was bound by the Rule 11 plea agreement to grant an I.C. § 19-2604(1) dismissal following Guess' period of probation. (R., vol. II, pp.223-30, 232-38; Tr., p.15, L.15 – p.20, L.18.) Alternatively, Guess argued that he was entitled to the requested relief because he complied with the conditions of probation and, he contended, the requested relief was compatible with the public interest. (R., vol. II, pp.230-32; Tr., p.10, L.1 – p.14, L.2, p.20, L.19 – p.22, L.25.) The court rejected both arguments, ultimately concluding that (1) nothing in the Rule 11 agreement bound the court to grant the requested relief, and (2) in light of the victim's expressed fear of Guess, a dismissal of the case and a restoration of his civil rights pursuant to I.C. § 19-2604(1) was not compatible with the public interest at that time. (Tr., p.37, L.25 – p.40, L.5, p.41, L.14 – p.42, L.13; R., vol. II, pp.280-87.)

Guess filed a notice of appeal timely both from the district court's December 23, 2011 order denying his "Motion To Dismiss Withheld Judgment," and from the court's February 12, 2012 order denying his Motion To Enforce Rule 11 Plea Agreement. (R., vol. II, pp.273-77.)

ISSUES

Guess' issue statement is set forth at page nine (9) of his Appellant's brief and, due to its length, is not repeated here. The state rephrases the issues on appeal as:

1. Has Guess failed to establish either a breach of the plea agreement or a violation of his due process rights resulting from the district court's orders denying his motions for I.C. § 19-2604(1) relief?

2. Has Guess failed to establish that the district court otherwise abused its discretion in denying his motions for I.C. § 19-2604(1) relief?

3. Has Guess failed to establish that the district court lacked jurisdiction to deny his motions for I.C. § 19-2604(1) relief?

ARGUMENT

I.
Guess Has Failed To Establish Either A Breach Of The Plea Agreement Or A Violation Of His Due Process Rights Resulting From The District Court's Orders Denying His Motions For I.C. § 19-2604(1) Relief

A. Introduction

Guess argues that, by denying his motions for I.C. § 19-2604(1) relief, the district court breached the Rule 11 plea agreement and violated his due process rights. (Appellant's brief, pp.9-28, 40-41.) Guess' arguments fail. The language of the plea agreement is plain and unambiguous and nothing therein required the district court to grant Guess the requested relief. Because the ultimate dismissal of his case pursuant to I.C. § 19-2604(1) was never a term of the plea agreement, Guess has failed to show either a breach of the plea agreement or a resulting violation of his due process rights.

B. Standard Of Review

Plea agreements are contractual in nature. State v. Lutes, 141 Idaho 911, 914, 120 P.3d 299, 302 (Ct. App. 2005). Therefore, as with other types of contracts, the interpretation and legal effect of a clear and unambiguous plea agreement are matters of law reviewed *de novo*. Id. Likewise, "whether a plea agreement has been breached is a question of law to be reviewed by [the appellate court] *de novo*, in accordance with contract law standards." State v. Gomez, 153 Idaho 253, ___, 281 P.3d 90, 92 (2012) (quoting State v. Peterson, 148 Idaho 593, 595, 226 P.3d 535, 537 (2010)); accord State v. Jafek 141 Idaho

71, 73, 106 P.3d 397, 399 (2005); State v. Schultz, 150 Idaho 97, 99, 244 P.3d 241, 243 (Ct. App. 2010).

The standard of appellate review applicable to constitutional issues, including claimed due process violations, is one of deference to factual findings, unless they are clearly erroneous, but free review of whether constitutional requirements have been satisfied in light of the facts found. State v. Decker, 152 Idaho 142, ___, 267 P.3d 729, 734 (Ct. App. 2011); State v. Jacobson, 150 Idaho 131, 134, 244 P.3d 630, 633 (Ct. App. 2010). "It is the defendant's burden to demonstrate facts that constitute a due process violation." Decker, 152 Idaho at ___, 267 P.3d at 734 (citing Jacobson, 150 Idaho at 134, 244 P.3d at 633; State v. Cantrell, 139 Idaho 409, 412, 80 P.3d 345, 348 (Ct. App. 2003)).

C. The Plea Agreement Is Plain And Unambiguous And Nothing Therein Required The District Court To Grant Guess' Motions For I.C. § 19-2604(1) Relief

When a defendant has entered a guilty plea in reliance upon a plea agreement with the state, the state is bound to honor the letter of the agreement and is also bound to behave consistently with the terms of the agreement. Santobello v. New York, 404 U.S. 257, 262 (1971); State v. Gomez, 153 Idaho 253, ___, 281 P.3d 90, 92 (2012); State v. Peterson, 148 Idaho 593, 595, 226 P.3d 535, 537 (2010); State v. Lutes, 141 Idaho 911, 914, 120 P.3d 299, 302 (Ct. App. 2005). Where, as here, a district court accepts without qualification what is intended by the parties to be a binding Rule 11 plea agreement, the court, as well as the prosecution and defendant, is bound by the terms of the

agreement. State v. Horkley, 125 Idaho 860, 865, 876 P.2d 142, 147 (Ct. App. 1994); United States v. Ritsema, 89 F.3d 392, 401 (7th Cir. 1996).

The principle that the state and court (in the case of a binding plea agreement) must honor the terms of a plea agreement "is derived from the Due Process Clause and the fundamental rule that, to be valid, a guilty plea must be both voluntary and intelligent." State v. Halbesleben, 147 Idaho 161, 165, 206 P.3d 867, 871 (Ct. App. 2009) (citing Mabry v. Johnson, 467 U.S. 405, 508-09 (1984); State v. Rutherford, 107 Idaho 910, 913, 693 P.2d 1112, 1115 (Ct. App. 1985)). If the prosecution or court breaches one or more terms of the agreement, "it cannot be said that the defendant's plea was knowing and voluntary, for the defendant has been led to plead guilty on a false premise" Id. (citing State v. Jones, 139 Idaho 299, 301-02, 77 P.3d 988, 990-91 (Ct. App. 2003)); see also Gomez, 153 Idaho at ___, 281 P.3d at 93 ("[A] claim that the State breached a plea agreement affects whether the agreement was knowingly or voluntarily entered ...."); but see Puckett v. United States, 556 U.S. 129, 137-38 (2009) ("[T]here is nothing to support the proposition that the government's breach of a plea agreement retroactively causes the defendant's agreement to have been unknowing or involuntary."). The defendant, however, bears the burden of proving a breach. Gomez, 153 Idaho at ___, 281 P.3d at 94.

In determining whether a plea agreement has been breached, the appellate court must examine the language of the agreement at issue. Id. (citing Peterson, 148 Idaho at 595, 226 P.3d at 537. If the language of the agreement is ambiguous, the ambiguity must be resolved in favor of the defendant. Id. If,

on the other hand, the language of a written plea agreement is unambiguous – *i.e.*, not reasonably subject to conflicting interpretations – the court "will not look beyond the four corners of the agreement to determine the intent of the parties." Id. (citing Beus v. Beus, 151 Idaho 235, 241, 254 P.3d 1231, 1237 (2011)).

The language of the plea agreement in this case is unambiguous. Paragraph two (2) of the written agreement provides in relevant part:

> 2. That the State and the Defendant agree that the appropriate disposition of this matter is as follows:
>
> That the Defendant shall receive a Withheld Judgment and shall be placed on probation to the Idaho State Department of Corrections for a period of no more than five (5) years. [Agreed upon terms of probation omitted.]

(R., vol. I, p.53.) Pursuant to the plain and unambiguous language of this provision, the trial court's only obligation upon accepting the plea agreement was to withhold judgment and place Guess on probation for no more than five years, which the trial court did. (See R., vol. I, pp.103-11 (order withholding judgment and placing Guess on probation for five years).) Nothing in the plain language of the agreement imposed upon the court an additional obligation to ultimately dismiss the case pursuant to I.C. § 19-2604(1) upon Guess' satisfactory completion of probation.

On appeal, Guess acknowledges that the written plea agreement is silent with respect to when, if ever, his guilty plea would be set aside pursuant to I.C. § 19-2604(1). (Appellant's brief, pp.18, 21-22.) He argues, however, that the absence of any express provision allowing for I.C. § 19-2604(1) relief renders the plea agreement ambiguous and, as such, the agreement must be construed in

his favor. (See Appellant's brief, p.18 ("[T]he Rule 11 Plea Agreement is ambiguous because it is vague and indefinite as to when Charles' guilty plea would be set aside. As such, the Rule 11 Plea Agreement must be construed in Charles' favor and it is 'implied by the plea agreement' that his guilty plea would be set aside upon completing probation."); pp.21-22 ("Since the district court and State both assert that the Rule 11 Plea Agreement does not specifically state when Charles' guilty plea would be set aside ..., the State must bear the responsibility for that lack of clarity.").) Guess' attempt to equate silence with ambiguity and to have this Court read into the written agreement a provision that simply is not there is directly foreclosed by the Idaho Supreme Court's recent opinion in State v. Gomez, 153 Idaho 253, 281 P.3d 90 (2012).

The defendant in Gomez pled guilty to three drug-related felonies. Id. at ___, 281 P.3d at 91-92. The written plea agreement called for specific sentencing recommendations but was silent with respect to restitution. Id. at ___, 281 P.3d at 94. The district court imposed the agreed upon sentences and, at the state's request, also ordered Gomez to pay more than $129,000 in restitution related to the costs of investigation. Id. at ___, 281 P.3d at 92. On appeal, Gomez argued that, because restitution was not mentioned in the plea agreement, the state's request for restitution and the issuance of the restitution order constituted a breach of that agreement. Id. The Idaho Supreme Court disagreed, ultimately concluding that, because the plain and unambiguous language of the written plea agreement was "silent as to the costs of restitution

or whether restitution would be sought," there was no agreement as to restitution and, as such, no breach. Id. at ___, 281 P.3d at 94-95. The Court explained:

> The parties could have included restitution in the written plea agreement if they wanted the agreement to contemplate the issue. When viewing the document within its four corners, the restitution order did not breach the contract as the issue was not contemplated in the plea agreement. Since the contract is clear and unambiguous, it is unnecessary for this Court to analyze any extrinsic evidence or to look at the intent of the parties.

Id. at ___, 281 P.3d at 95.

The reasoning of Gomez applies equally in this case and compels the conclusion that the district court did not violate binding Rule 11 plea agreement by declining to order an I.C. § 19-2604(1) dismissal after Guess satisfactorily completed his probation. The written plea agreement calls for a specific sentencing disposition – *i.e.*, a withheld judgment and no more than five years of probation – but is silent with respect to when, and whether, Guess would ever be entitled to dismissal of the case pursuant to I.C. § 19-2604(1). Because the plain and unambiguous language of the plea agreement does not even contemplate the issue of an I.C. § 19-2604(1) dismissal, the district court could not, and did not, breach the agreement by denying Guess' motions for I.C. § 19-2604(1) relief. Gomez, 153 Idaho at ___, 281 P.3d at 95. See also Lutes, 141 Idaho at 914-15, 120 P.3d at 302-03 (where plea agreement called for period of retained jurisdiction but was silent as to whether defendant would be placed on probation at end of retained jurisdiction period, trial court did not breach agreement by relinquishing jurisdiction).

Contrary to Guess' assertions (see Appellant's brief, pp.18-21, 24-28), this is not a case like State v. Peterson, 148 Idaho 593, 226 P.3d 535 (2010), where the state was bound by the defendant's understanding of the plea agreement because the prosecutor stood silent in the face of the defense's representation at the change of plea hearing regarding the meaning of an ambiguous term. Unlike the plea agreement at issue in Peterson, the plea agreement in this case is reduced to writing and unambiguously sets forth the state's and court's obligations with respect to the appropriate sentencing disposition, with no mention whatsoever of an eventual dismissal pursuant to I.C. § 19-2604(1). There being no ambiguity in the written plea agreement, it is the four corners of that agreement, not Guess' "reasonable understanding," that controls. See Gomez, 153 Idaho at ___, 281 P.3d at 94-95 (distinguishing Peterson on basis that the plea agreement in that case was ambiguous and concluding: "Since the contract [in Gomez] is clear and unambiguous, it is unnecessary for this Court to analyze any extrinsic evidence or to look at the intent of the parties.").

Even assuming evidence of Guess' "reasonable understanding" were at all relevant to interpretation of the unambiguous plea agreement, a review of Guess' statements at the change of plea hearing shows he understood that the term "withheld judgment," as used in the plea agreement, meant only that he could eventually *petition* for relief pursuant to I.C. § 19-2604(1), not that such relief would automatically be granted:

> THE COURT: And do you understand that the agreement contemplates that you would receive a withheld judgment as a result of pleading guilty to this charge?

THE DEFENDANT: Yes, sir.

THE COURT: Do you know what a "withheld judgment" means?

THE DEFENDANT: Yes.

THE COURT: Why don't you explain to me what you're [sic] understanding is.

THE DEFENDANT: Well, I mean that – I guess, I'd explain that – my understanding of the entire agreement is that I – that I am pleading guilty to this charge and that I will spend – my punishment will include 30 days in incarceration in the Latah County jail. I will pay a $1,000 fine. And I'm pleading guilty to one of the – one of the felony charges. I'll have a year period of probation, and if I fulfill the period of probation without any problems in that period of time, that the felony charges would – would be dropped.

[Clarification by defense counsel that the period of probation would be determined by the court.]

THE COURT: Well, Mr. Guess, the – I think you understand what a withheld judgment means. It means that if you comply with your terms and conditions of probation that at the conclusion of the period of probation, which is for a period of no more than five years, according to the agreement, that ***you could come in and petition to have your guilty plea, which you tendered today, withdrawn and the charge against you dismissed. Do you understand that?***

THE DEFENDANT: ***I do, yes***.

(Tr., p.77, L.5 – p.78, L.16 (emphasis added).) The above colloquy shows that, to the extent Guess believed the plea agreement calling for a withheld judgment meant the "felony charges would ... be dropped" upon his successful completion of probation, such misconception was expressly corrected by the district court who advised Guess that he could *petition* to have his guilty plea withdrawn and the case dismissed. Guess specifically acknowledged understanding the effect

of the withheld judgment, as contemplated by the plea agreement and explained by the district court. Guess' claim, both in his motions for I.C. § 19-2604(1) relief and on appeal, that he reasonably understood the plea agreement to provide for the automatic dismissal of the case upon his successful completion of probation is thus belied by his own statements at the time he actually entered his plea. Guess has failed to show that the court breached the plea agreement or acted contrary to his understanding thereof, as expressed during the plea colloquy, by declining to grant his motions for I.C. § 19-2604(1) relief.[1]

---

[1] In addition to arguing a breach of the plea agreement, Guess argues that the district court's and state's interpretation of the plea agreement as not requiring an automatic dismissal of the case upon Guess' successful completion of probation is "contrary to the legislature's intent for authorizing withheld judgments." (Appellant's brief, p.16.) According to Guess, the case law interpreting Idaho Code §§ 19-2601(3) and 19-2604(1) "implicitly hold[s] that a court has no discretion to deny a request to set aside a guilty plea upon a defendant's compliance with the terms of probation and sentence under a withheld judgment." (Id. at 16-17; see also pp.40-41 ("Once the Court accepted the Rule 11 Plea Agreement, entered the resulting Order Withholding Judgment and Charles complied with the required sentence and probation, the remaining issue is purely the *procedural* step of setting aside his guilty plea and restoring his civil rights." (emphasis original)).) This argument is frivolous.

Idaho Code § 19-2603(1) gives the court discretion to withhold judgment "on such terms and for such time" as the court may prescribe. Idaho Code § 19-2604(1) provides that a court "may" thereafter set aside the defendant's plea and finally dismiss the case if two conditions are met: there have been no adjudicated probation violations *and* dismissal of the case is "compatible with the public interest." Neither of the authorities Guess cites stand for the proposition that a court must dismiss a case pursuant to I.C. § 19-2604(1) upon a showing by the defendant that he has satisfactorily complied with the conditions of probation. Rather, the cases merely state that a trial court may not indefinitely withhold judgment, Ex parte Medley, 73 Idaho 474, 483-84, 253 P.2d 794, 800 (1953), and that the satisfactory completion of probation is a condition that must be met before the district court can exercise its discretion to dismiss a case in which a withheld judgment has previously been entered, State v. Hanes, 139 Idaho 392, 394, 79 P.3d 1070, 1072 (Ct. App. 2003).

The written Rule 11 plea agreement is unambiguous. Because nothing therein contemplates the automatic dismissal of the case pursuant to I.C. § 19-2604(1) upon Guess' successful completion of probation, the district court did not breach the agreement by denying Guess' I.C. § 19-2604(1) motions. Having failed to show any breach, Guess has also failed to show any resulting violation of his due process rights. The district court's order denying Guess' Motion To Enforce Rule 11 Plea Agreement must be affirmed.

II.
Guess Has Failed To Establish That The District Court Otherwise Abused Its Discretion In Denying His Motions For I.C. § 19-2604(1) Relief Based On Its Determination That The Requested Relief Was Not Compatible With The Public Interest

A. Introduction

The district court denied Guess' "Motion To Dismiss Withheld Judgment," and his subsequent motion for clarification, based on its determination that a dismissal of the case was not yet "compatible with the public interest," as required by I.C. § 19-2604(1). Specifically, the court found that, while Guess had been an exemplary probationer, the nature of Guess' crime and the victim's continuing fear countenanced against an I.C. § 19-2604(1) dismissal and the resulting restoration of Guess' civil rights at that time. (R., vol. II, pp.212-13, 284-86; Tr., p.56, L.19 – p.57, L.15, p.38, L.7 – p.40, L.5, p.41, L.14 – p.42, L.13.) Guess challenges the district court's rulings on a number of bases, none of which show an abuse of discretion in the denial, without prejudice, of his motions for I.C. § 19-2604(1) relief.

B. Standard Of Review

The decision to grant or deny motion made pursuant to I.C. § 19-2604(1) "rest[s] in the sound discretion of the district court." Housley v. State, 119 Idaho 885, 890, 811 P.2d 495, 500 (Ct. App. 1991). When a trial court's discretionary decision is reviewed on appeal, the appellate court conducts a multi-tiered inquiry to determine: (1) whether the lower court correctly perceived the issue as one of discretion; (2) whether the lower court acted within the bounds of such discretion and consistently with any legal standards applicable to the specific choices before it; and (3) whether the lower reached its decision by an exercise of reason. State v. Ruperd, 146 Idaho 742, 743, 202 P.3d 1228, 1289 (Ct. App. 2009) (citing State v. Hedger, 115 Idaho 598, 600, 768 P.2d 1331, 1333 (1989)).

C. Guess Has Failed To Show An Abuse Of Discretion In The District Court's Determination That An I.C. § 19-2604(1) Dismissal Was Not Compatible With The Public Interest

Guess sought relief pursuant to I.C. § 19-2604(1), which provides in relevant part:

> (1) If sentence has been imposed but suspended, or if sentence has been withheld, upon application of the defendant and upon satisfactory showing that:
>
> > (a) The court did not find, and the defendant did not admit, in any probation violation proceeding that the defendant violated any of the terms or conditions of probation ...
>
> the court may, if convinced by the showing made that there is no longer cause for continuing the period of probation, and if it be compatible with the public interest, terminate the sentence or set aside the plea of guilty or conviction of the defendant, and finally dismiss the case and discharge the defendant .... The final dismissal of the case as herein provided shall have the effect of restoring the defendant to his civil rights.

I.C. § 19-2604(1) (as amended by 2011 Idaho Sess. Laws, ch. 187, § 1).[2] Pursuant to the plain language of this statute, a district court may exercise its discretion to set aside a guilty plea and finally dismiss a case in which a withheld judgment was previously entered only when (1) the defendant has no adjudicated probation violations, and (2) doing so is "compatible with the public interest."

In support of his motion for an I.C. § 19-2604(1) dismissal, Guess submitted his own affidavit, which detailed his success on probation (R., vol. II, pp.176-77), as well as 14 letters of support (R., vol. II, pp.179-209), including a letter from his former psychologist who opined that Guess no longer posed a threat to his ex-wife (R, vol. II, pp.182-83). The district court specifically considered these materials and the fact that Guess had "performed as well as any defendant [the court could] remember while on probation." (Tr., p.56, Ls.19-24.) "On the other side of the scale," however, the court also considered the "abominable behavior which resulted in" Guess' guilty plea and the fact that the victim, Michele Guess, stated at the hearing on Guess' motion that she still feared Guess. (Tr., p.56, L.25 – p.57, L.4.) Specifically, Michele stated:

> You know, I believe in resolution. But I also believe that I have my rights, too, as a victim. And the law is the law. And I believe that your decision will be honored.

[2] Before the 2011 amendment, I.C. § 19-2604(1) required as a prerequisite to the setting aside of a guilty plea and final dismissal of the case a "satisfactory showing that the defendant [had] at all times complied with the terms and conditions upon which he was placed on probation."

> I do wish to continue my relationship with my son. And I would also like to tell you that I still have some fear. I will never probably resolve that and neither will my immediate family.
>
> So, it's your decision, Judge. And I have written a letter to you in the very beginning telling you my feelings about my position. And to this point, you know, I, as a victim, will always be in fear of Mr. Guess. So, it's your decision, Judge. And thank you for letting me speak.

(Tr., p.55, Ls.11-24.) After balancing Michele's expressed fear and the nature of the crime against the fact that Guess had performed well on probation and had numerous letters of support, the district court denied Guess' motion without prejudice. (Tr., p.56, L.19 – p.57, L.15; R., vol. II, pp.212-14.)

Guess subsequently moved for "clarification" of the district court's order. (R., vol. II, pp.218-59.) The district court treated the motion as one for reconsideration and denied it without prejudice, explaining:

> There's a lot of water under the bridge here, and I think to get back to my earlier observation, this is a dynamic process. And in order for me to restore Mr. Guess's rights I have to find that it is compatible with the public interest, and I have to do that now as opposed to when I entered the withheld judgment.
>
> That isn't to say that I will never grant the relief requested by Mr. Guess, it's that at this juncture I'm unprepared to do so. So, to the extent that it's a motion to reconsider, I'm denying that, as well, but I'm denying that without prejudice.
>
> I think there will come a time when Mr. Guess's rights will be restored. I can't tell you when that time will be, but I think given the showing that I have seen, given the contrition that I have seen, given the rehabilitation that I have seen, I think Mr. Guess is on the right track as far as having me grant the relief that he requests.
>
> ...
>
> I can tell you I haven't ever seen the showing that was made by [defense counsel] at the last hearing as it relates to someone's rehabilitation. Mr. Guess is clearly contrite. He's remorseful. He

> has done all that he can do in order to be awarded the relief that he seeks today. But I think there's a twofold determination. Not only must I determine that he has done everything that he can do, but that it would be compatible with public interest.
>
> I'm not saying that Michele Guess's acquiescence in this request is what needs to occur. I can tell you that if she had no objection, I would grant it, though. But at some point I may conclude that that acquiescence will never be forthcoming and that it is yet compatible with the public interest to grant Mr. Guess the relief he requests.
>
> ...
>
> This is a tough case. I don't think there's any doubt about it. But I don't think the Rule 11 Agreement obligates me to grant him the relief he requests even if he did everything that was required of him. I think I still must make an independent determination that granting the relief requested is compatible with public interest, and I'm not quite there yet.

(Tr., p.38, L.7 – p.40, L.5; see also R., vol. II, pp.280-87 (written order denying motion).) In response to a request for clarification by defense counsel, the district court further elucidated the basis of its ruling, ultimately explaining: "[M]y hesitancy is based on the compatibility with the public interest, and Michele Guess as a victim of this offense, carries no small amount of voice in that." (Tr., p.41, L.14 – p.42, L.13.)

On appeal, Guess does not contend that the district court failed to recognize the issue before it as one of discretion. Rather, he contends, variously, that the district court misapplied the law, made erroneous factual findings and, ultimately, had no discretion to deny the requested relief under the facts as Guess perceives them. (See generally Appellant's brief, pp.28-38.) For the reasons that follow, all of Guess' arguments are unavailing and fail to show any abuse of discretion by the district court.

Guess' first claim of error centers on his assertion that, by withholding judgment in the first place, the district court "must have implicitly found it to be 'compatible with the public interest'" and, as such, was somehow precluded from making a contrary finding in relation to Guess' subsequently filed motions for I.C. § 19-2604(1) relief. (Appellant's brief, pp.29-30; see also Appellant's brief, p.34 (arguing that "the district court and State are collaterally estopped" from relying on victim's fear in "compatible with the public interest" analysis because court and state were aware when Guess entered his plea and received a withheld judgment that victim feared him).) Guess is incorrect. The district court's finding at the guilty plea and sentencing stages of the proceedings that "the interests of justice would best be served" by withholding judgment and placing Guess on probation pursuant to I.C. § 19-2601(3) (see R., vol. I, p.104) was, in effect, nothing more than a finding that Guess should have the *opportunity* to avoid the stigma of a criminal conviction and to someday have his case dismissed and his civil rights restored. I.C. § 19-2604(1) (where sentence has been withheld, court *may* set aside plea, dismiss case and discharge defendant upon defendant's *application*); Ex parte Medley, 73 Idaho 474, 479, 253 P.2d 794, 797 (1953) (when court withholds judgment it "creates ... a *hope* in the heart of the accused that he may ultimately be released under an order of probation without the stigma of a judgment of conviction" (emphasis added)). That was an entirely different finding than the one the court was required to make in relation to Guess' motion for dismissal – *i.e.*, whether it was "compatible with the public interest" to ultimately *grant* the requested relief that would have the effect

of actually restoring Guess' civil rights.[3] Guess' claim that the district court's decision to withhold judgment in the first place somehow bound it to grant his subsequent motion for dismissal pursuant to I.C. § 19-2604(1) is meritless.

Guess next argues that, because he "complied with probation and better than 'any defendant [the district court could] remember while on probation' ..., the plain and rationale [sic] meaning of I.C. § 19-2604(1), interpreted to not render an absurd result, dictates that the district court had no discretion to deny relief." (Appellant's brief, p.30 (brackets and emphasis original) (citations omitted).) This argument is also meritless. By its plain language, I.C. § 19-2604(1) requires a defendant seeking dismissal of his case to show *both* that he has no adjudicated probation violations *and* that the requested dismissal is "compatible with the public interest." If the legislature had intended to grant trial courts the authority to set aside a defendant's plea and finally dismiss a case merely upon a showing that the defendant complied with probation, it easily

[3] Although I.C. § 19-2604(1) contains no limitation on the civil rights that are restored to a defendant upon final dismissal of the case, there was some debate among the parties below as to whether, in the event Guess' case was dismissed, his right to possess firearms would nevertheless be limited by virtue of I.C. § 18-310. (See R., vol. II, pp.262, 269-72; Tr., p.17, L.21 – p.18, L.25, p.30, Ls.8-21.) The state maintains, as it did below, that the I.C. § 18-310(3) provides the exclusive method by which Guess' gun rights may be restored. However, because the district court did not grant Guess' requests for an I.C. § 19-2604(1) dismissal and, therefore, did not purport either to fully restore or to limit the restoration of Guess' civil rights, Guess' claim on appeal that the court erred by "refus[ing] to restore" his gun rights (Appellant's brief, pp.41-45) is not properly before this Court. See State v. Huntsman, 146 Idaho 580, 585, 199 P.3d 155, 160 (Ct. App. 2008); State v. Grube, 126 Idaho 377, 387, 883 P.2d 1069, 1079 (1994) (citing State v. Fisher, 123 Idaho 481, 485, 849 P.2d 942, 946 (1993); Dunlick, Inc. v. Utah-Idaho Concrete Pipe Co., 77 Idaho 499, 502, 295 P.2d 700, 702 (1956)) ("in order for an issue to be raised on appeal, the record must reveal an adverse ruling which forms the basis for an assignment of error").

could have done so. The fact that legislature required, as an additional consideration, that the dismissal also be "compatible with the public interest" shows the legislature's intent that success on probation and compatibility with the public interest are not always synonymous. Indeed, the district court found that the two were *not* synonymous in this case. Guess' argument that he was entitled to relief merely because he was an exemplary probationer utterly ignores the "compatible with the public interest" requirement of I.C. § 19-2604(1) and shows no abuse of discretion by the district court.

Next, Guess argues that the district court "misapplied the law when it determined that a victim's 'fear' supported a finding that it was not 'compatible with the public interest'" to set aside Guess' plea to aggravated assault and finally dismiss the case. (Appellant's brief, p.30.) According to Guess, because the words "victim" and "fear" do not expressly appear in either I.C. §§ 19-2601(3) (statute authorizing withheld judgment) or 19-2604(1), the fact that a victim is fearful and/or objects to the defendant's request for dismissal is not relevant and may not be considered by the court in determining whether the requested dismissal is "compatible with the public interest." (Appellant's brief, pp.30-32.) Guess' interpretation of the term "public interest," as it is used in the statute, is unduly restrictive and ignores the fact that victims' rights are a matter of public interest under Idaho law. See Idaho Const., art. I, § 22 (enumerating rights of crime victims, including rights to "fairness, respect, dignity and privacy throughout the criminal justice process," to "timely disposition of the case," to notice of court proceedings, to "be present at all criminal justice proceedings,"

and to "be heard, upon request, at all criminal justice proceedings considering a plea of guilty, sentencing, incarceration or release of the defendant, unless manifest injustice would result"); I.C. § 19-5306 (same). In a case such as this, where the granting of relief would result in the setting aside of a defendant's guilty plea to a violent crime, a dismissal of the case and a restoration of the defendant's rights (including, at least potentially, the right to possess firearms), there can be no serious question that the public has an interest in the victim's safety and sense of well-being.

Guess argues that interpreting the "compatible with public interest" requirement of I.C. § 19-2604(1) to include consideration of the victim's fear "would empower the Judge and the victim with unlimited discretion" to deny a defendant I.C. § 19-2604(1) relief, even where such relief is otherwise appropriate. (Appellant's brief, p.32.) The state disagrees. As recognized by the district court in this case, a victim's continuing fear of a defendant is one of many considerations that must be balanced in determining whether to grant the defendant's request for I.C. § 19-2604(1) relief. (See Tr., p.39, Ls.15-20 ("I'm not saying that Michele Guess's acquiescence in this request is what needs to occur. ... [A]t some point I may conclude that that acquiescence will never be forthcoming and that it is yet compatible with the public interest to grant Mr. Guess the relief he requests."); R., pp.285-86 ("The determination that Guess should be granted relief under I.C. § 19-2604(1) is not entirely dependent on Michele's acquiescence. Such acquiescence may never occur. Nonetheless, this Court is unwilling to disregard her fear of the Defendant and her objection to

him being granted relief pursuant to I.C. § 19-2604(1), at this time.").) That the court considered the victim's continuing fear of Guess in determining whether the requested relief was yet "compatible with the public interest" in this case does not, by itself, show an abuse of discretion.

Guess next argues that the district court's findings that the victim still feared Guess and objected to his request for an I.C. § 19-2604(1) dismissal are not supported by any evidence. (Appellant's brief, pp.32-38.) This argument is patently meritless. Michele appeared telephonically at the hearing on Guess' motion to dismiss and explicitly stated that she "still [had] some fear" and that, "as a victim, will always be in fear of Mr. Guess." (Tr., p.55, Ls.17-23.) Although Michele never used the word "object," she did ask the court to consider her "rights ... as a victim," the law, her continued fear of Guess, and her "feelings about [her] position" as expressed in a letter she wrote to the court at the time of sentencing.[4] (Tr., p.55, Ls.11-24.) It is thus clear from the context of Michele's comments that, while she would "honor[]" any decision the court made, she opposed Guess' motion for dismissal and an accompanying restoration of his civil rights. (Id.) Guess has failed to show clear error in the district court's factual

[4] In the letter she wrote for purposes of sentencing, Michele described her feelings toward Guess as those of "unbelievable terror," and she asked the court to "take into consideration the respect of [her] worth as an individual" and to impose a "strong" sentence that would ensure Guess would never again harm her or any other person. (Tr., p.106, Ls.14-16, p.107, L.10 – p.108, L.18.) Michele reiterated those sentiments in her interview with the presentence investigator (PSI, pp.4-7) and specifically expressed in that interview her fear that, after Guess' probation term ended, he would be allowed to possess weapons again. (PSI, p.6).

findings that Michele still feared Guess and objected to his motion for I.C. § 19-2604(1) relief.

Finally, Guess argues that the district court erred in relying on Michele's fear as the basis not to set aside Guess' guilty plea, dismiss the case and restore his civil rights because, according to Guess, there were no facts or evidence to support a finding that Michele's continued fear was objectively reasonable. (Appellant's brief, pp.33, 36-38.) To support this claim, Guess points to the facts that he was a model probationer, never violated the order that prohibited him from having contact with Michele, was cordial to Michele during their divorce proceedings, and had numerous letters of support, including one from his former psychologist who opined that Guess no longer posed a threat to Michele. (Id.) The state does not concede that, as a matter of law, the district court was required to find Michele's fear objectively reasonable before it could rely on it as a basis to conclude that dismissal of Guess' case was not yet compatible with the public interest, nor has Guess cited any authority that stands for such proposition. (See Appellant's brief, p.36 (citing standard for self-defense).) Assuming for purposes of argument that an objectively reasonable fear is the standard, however, there was plenty of evidence before the court to support the conclusion that Michele's continued fear of Guess was objectively reasonable in this case.

By his own admission, the restoration of his right to possess firearms was one of the primary reasons Guess sought dismissal of his case.[5] (Appellant's

[5] See footnote 3, *infra*.

brief, p.2 n.1; R., vol. II, pp.245-56; Tr., p.18, Ls.7-12, p.34, L.16 – p.35, L.12.) Yet, just five years earlier, while embroiled in a bitter divorce dispute with Michele, Guess followed Michele and her divorce attorney to an open vault in the basement of his home and, while their backs were turned, "he produced a .40 caliber Glock pistol and moved the slide to indicate a bullet had been advanced into the gun's barrel." (R., vol. II, p.281; PSI, pp.2-4, 7-8.) When Michele and her attorney turned around, Guess was pointing the gun at them and threatened to kill both of them. (R., vol. II, p.281; PSI, pp.3-4,8.) Michele moved toward Guess and Guess twice struck her in the face with his fist. (R., vol. II, p.281; PSI, pp.3, 8.) He also ordered Michele's attorney to walk into the vault and remove his pants. (PSI, pp.3-4.) While Michele and her attorney were ultimately able to escape the home without being shot, Michele feared throughout the ordeal that Guess was going to shoot her and then shoot himself. (PSI, pp.3-5.)

Even assuming the district court was required to find that Michele's continued fear of Guess was objectively reasonable, the above facts, specifically considered by the district court in relation to Guess' motions to dismiss (Tr., p.56, L.25 – p.57, L.4; R., vol. II, p.281), support such a finding. There can be no question that an objectively reasonable person, having been held at gunpoint and battered by her estranged husband, would continue to fear her assailant five years later, particularly when he is specifically seeking to have his right to possess firearms restored. Given the victim's objectively reasonable fear, the relatively close proximity of the crime to Guess' motion, and the fact that the underlying crime involved a firearm, it was entirely reasonable for the district

court to conclude that the setting aside of Guess' guilty plea and dismissal of his case at this early date was not yet "compatible with the public interest" as required by I.C. § 19-2604(1). Guess has failed to show an abuse of discretion in the denial, without prejudice, of his motions for I.C. § 19-2604(1) relief.

III.
Guess Has Failed To Establish That The District Court Exceeded Its Jurisdiction By Denying His Motions For I.C. § 19-2604(1) Relief

A. Introduction

Guess argues that, by denying his motions to dismiss his case pursuant to I.C. § 19-2604(1), the district court "unilaterally and indefinitely" extended his withheld judgment and probationary period beyond the five-year maximum sentence for aggravated assault, thereby exceeding its jurisdiction. (Appellant's brief, pp.38-40.) Guess' argument fails. That the district court declined to set aside Guess' plea and dismiss his case pursuant to I.C. § 19-2604(1) did not extend the withheld judgment, which by its own terms lapsed after five years.

B. Standard Of Review

"Whether a court lacks jurisdiction is a question of law that may be raised at any time, and over which appellate courts exercise free review." State v. Jones, 140 Idaho 755, 757, 101 P.3d 699, 701 (2004). The appellate court also freely reviews the construction and application of a statute. State v. Shock, 133 Idaho 753, 755, 992 P.2d 202, 204 (Ct. App. 1999); State v. Schumacher, 131 Idaho 484, 485, 959 P.2d 465, 466 (Ct. App. 1998).

C. The District Court Did Not Exceed Its Jurisdiction Or Indefinitely Withhold Judgment By Denying Guess' Motions For I.C. § 19-2604(1) Relief

The power of a court to withhold judgment in a criminal case derives from I.C. § 19-2601(3), which provides:

> Whenever any person shall have been convicted, or enter a plea of guilty, in any district court of the state of Idaho, of or to any crime against the laws of the state, except those of treason or murder, the court in its discretion may:
> ...
>
> 3. Withhold judgment on such terms and for such time as it may prescribe and may place the defendant on probation[.]

"If the court grants a withheld judgment to a particular defendant and places that defendant on probation, jurisdiction is retained by the district court during the period of probation and the court has continuing jurisdiction to modify the conditions of the defendant's probation." State v. Branson, 128 Idaho 790, 792, 919 P.2d 319, 321 (1996) (citing Peltier v. State, 119 Idaho 454, 460, 808 P.2d 373, 379 (1991)); see also Ex parte Medley, 73 Idaho 474, 483, 253 P.2d 794, 800 (1953). A court may not, however, withhold judgment indefinitely. Ex parte Medley, 73 Idaho at 483-84, 253 P.3d at 800. If it does so, "it has, for all practical purposes, lost jurisdiction to proceed further." Id. (citation omitted).

After Guess pled guilty to aggravated assault, the district court, acting pursuant to its authority under I.C. § 19-2601(3), entered an order withholding judgment and placing him on probation for five years. (R., vol. I,pp.103-11.) The order was file stamped September 6, 2006, and was dated "nunc pro tunc to August 31, 2006," by the district judge. (R., vol. I, pp.103, 110.) Assuming for purposes of argument the "nunc pro tunc" date controls, the withheld judgment

expired, by its own terms, on August 31, 2011.[6] Contrary to Guess' assertions on appeal, the fact that the district court did not thereafter dismiss the case pursuant to Guess' motions for I.C. § 19-2604(1) relief did not extend the withheld judgment beyond the expiration of its five-year term.

Idaho Code § 19-2604(1) gives the court discretion to set aside a guilty plea and dismiss a case in which a withheld judgment has been previously entered. The statute says nothing about dismissing the withheld judgment itself, and the relief there under is not automatic but is subject to a finding by the court that the defendant has no adjudicated probation violations and the final dismissal of the case is "compatible with the public interest." I.C. § 19-2604(1). The district court in this case resolved the "compatible with the public interest" question in favor of delaying I.C. § 19-2604(1) relief and, in so doing, put Guess in the same position as any other defendant whose motion for I.C. § 19-2604(1) relief has been denied or who never made an I.C. § 19-2604(1) motion at all. The denial of relief did not extend the withheld judgment which, by its terms, is no longer enforceable against Guess (in the sense that the court cannot enter judgment), but was a legitimate exercise of the court's discretion to decline to

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[6] Because the withheld judgment expired on August 31, 2011, the court had no jurisdiction beyond that date to enforce the withheld judgment – *i.e.,* it had no jurisdiction to keep Guess on probation, modify the conditions of probation, or revoke probation and enter judgment based upon any alleged probation violation. See Branson, 128 Idaho at 792, 919 P.2d at 321 (if defendant violates probation within period of withheld judgment, court may revoke probation and "impose any sentence which originally might have been imposed at the time of conviction" (citations and internal quotations omitted)). The state thus agrees with Guess that the court's December 23, 2011 order that purported to finally discharge Guess from probation (R., vol. II, p.213), when his probation period had already expired as a matter of law, is void.

dismiss the case in which the order withholding judgment had been entered. Guess has failed to establish that the district court exceeded its jurisdiction by denying his I.C. § 19-2604(1) motions.

CONCLUSION

The state respectfully requests that this Court affirm the district court's orders denying Guess' motions for dismissal of his withheld judgment.

DATED this 18th day of September 2012.

LORI A. FLEMING
Deputy Attorney General

CERTIFICATE OF MAILING

I HEREBY CERTIFY that on this 18th day of September 2012, I caused two true and correct copies of the foregoing BRIEF OF RESPONDENT to be placed in the United States mail, postage prepaid, addressed to:

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LAF/pm